

## REMARKS

In accordance with the foregoing, claims 5 and 14 have been amended. Claims 1-22 are pending and under consideration.

The present amendments overcome the objection to the drawings and the rejection under 35 U.S.C. § 112.

The double patenting rejection is overcome by the attached terminal disclaimer.

The rejection under 35 U.S.C. § 102 is respectfully traversed. Independent claim 1 recites a baking tray. In contrast, WO '164 discloses a pan. The Examiner states that the use of the claimed baking tray in a bread maker is an intended use only, which provides no structural limitations on the claims. However, the Examiner is referring to the clause in the claim that states "to be used in a bread maker." This clause does not include the claimed feature of a baking tray. Thus, even assuming, *arguendo*, that the intended use carries no patentable weight, the structural distinction would not be overcome.

The rejection under 35 U.S.C. § 103 is respectfully traversed, since the Examiner has not established proper motivation for the combination. The Examiner's purported motivation is to prevent damage to the tray by food sticking thereto. However, this damage is not mentioned in either of the references.

This omission is important, since "rejection of patent application for obviousness under 35 USC §103 must be based on evidence comprehended by language of that section, and search for and analysis of prior art includes evidence relevant to finding of whether there is teaching, motivation, or suggestion to select and combine references relied on as evidence of obviousness; factual inquiry whether to combine references must be thorough and searching, based on objective evidence of record." In re Lee 61 USPQ2d 1430 (CAFC 2002).

Thus, as pointed out in In re Lee, the record must support motivation, i.e., there must be something in the record pointing out where the recited motivation can be found. In addition, there must be some discussion on how that purported motivation or suggestion is even relevant to the reference being modified.

However, since KR '012 does not teach that food sticks to the baking tray 15, there would have been no motivation to modify the baking tray 15 to have a non-sticky surface. Thus, there is nothing in the references as to how the motivation is relevant, as required by In re Lee.

Accordingly, withdrawal of the rejections is requested.

There being no further outstanding objections or rejections, it is submitted that the application is in condition for allowance. An early action to that effect is courteously solicited.

Finally, if there are any formal matters remaining after this response, the Examiner is requested to telephone the undersigned to attend to these matters.

If there are any additional fees associated with filing of this Amendment, please charge the same to our Deposit Account No. 19-3935.

Respectfully submitted,

STAAS & HALSEY LLP

Date: \_\_\_\_\_

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